

REMARKS

Claims 1-18 are pending in the present application. Claims 13-18 are withdrawn from consideration. Claims 1-12 are rejected. Claims 1, 3, 5-6, 8-9 and 11-18 are herein canceled.

Claims 2, 4, 7 and 10 are herein amended. No new matter has been entered, because claims 2, 4, 7 and 10 are merely amended to incorporate the limitations of claims 3, 6, 9 and 12, respectively. Thus, the amendments merely render claims 3, 6, 9 and 12 into independent form, and clearly raise no new issues that would require additional search or consideration.

Claim Rejections - 35 U.S.C. §103(a)

Claims 1-9 are rejected under 35 U.S.C. §103(a) as being obvious over Clarkson et al. (US Patent Application 2001/0036964 A1) in view of McCue et al. (US Patent 5,403,587). The Examiner asserts that Clarkson et al. discloses that perfume may be added to the deodorant containing 1,2-hexanediol and 1,2-octanediol for the purpose of prevention of body odor. The Examiner asserts that McCue et al. discloses citronella as a compound having antimicrobial properties, and that it is obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose.

The Examiner notes the declaration under 37 C.F.R. §1.132 by Okada filed February 23, 2007, but deems it insufficient to overcome the rejection of claims 1-12 based upon Clarkson, McCue, and Jensen et al. The Examiner initially asserts that the Declaration is not commensurate with the scope of the claims, since the only synergistic data present is between

thymol and 1,2-octanediol, and the Examiner asserts that “1,2-octanediol has been previously canceled from the claims.”

Applicants respectfully point out that while 1,2-octanediol was previously removed from some claims, it remained the basis of claims 3, 6, 9 and 12, the limitations of which remain pending in the application. Therefore, Applicants submit that the Examiner has failed to review the Declaration and other data with respect to claims 3, 6, 9 and 12. Applicants submit that experimental data with respect to 1,2-octanediol is entirely pertinent to claims 3, 6, 9 and 12, which are directed to 1,2-octanediol.

Applicants submit that evidence of unexpectedly superior results exists at least for previously pending claims 3, 6 and 9. That is, there is evidence of unexpectedly superior (synergistic) results associated with 1,2-octanediol and each of citronellal, terpinyl acetate, citronellol and β -pinene in the original specification. Such evidence specifically supports claims 3, 6, 9 (and 12), which are directed specifically to compounds including 1,2-octanediol.

However, in the previous Response (page 9 to 13), in order to respond to the Examiner's statement of the previous Office Action “there is no raw data for how synergism was deemed for Table 1-3”, raw data showing synergistic action of antibacterial effect obtained from combinations of all perfumes described in the present invention and 1,2-octanediol were presented. Thus, Applicants obviously submitted the raw data showing synergistic action of antibacterial effect with the scope of the claims in the response to the Office Action. Thus, unexpected synergistic effect of the present invention was shown by the raw data.

Applicants present the following points (1) to (3).

(1) In [0049] to [0077] of the present specification, test results showing unexpected effects obtain by combining perfumes according to the present invention with 1,2-octanediol are described.

(2) In Tables 1 to 8 of page 9 to 11 of the previous Response, the corresponding raw data was presented, meanwhile how the raw data are read from the Figs. 2 to 9 of the present specification was explained by using Fig. 2(a) of the specification (the combination of thymol and 1,2-octanediol) as an example in the reasoning (page 11 to 13).

(3) In page 5 to 13 of the declaration, the test result showing counteraction obtained by combining perfumes cited in the Ref 2 with 1,2-octanediol was described.

By combining the above (1), (2) and (3), it is shown that only particular perfumes of the present invention show synergistic action of antibacterial effect when combined with 1,2-octanediol; the others show non-synergistic or even subtractive effects. Thus, unexpected synergistic effect obtained from combinations of particular perfumes and 1,2-octanediol have already been presented and such effects would not have been predictable by the cited combination of references.

The Examiner further asserted that the Declaration is not commensurate with the scope of the claims because Applicant has only provided "a single data point as it pertains to 1,2-octanediol." Applicants believe that the Examiner may be misunderstanding the Declaration.

As noted above, Applicants have submitted direct evidence of compounds including fragrance agents other than those claimed as not producing an unexpected result, and in some cases exhibiting a subtractive result. The original specification shows such negative results

associated with the combination of 1,2-octanediol with each of isobornyl acetate and guaiac acetate. Moreover, the Declaration dated February 13, 2007 shows negative results associated with the combination of 1,2-octanediol and fragrances and perfumes including Farnesol, α -Bisabolol, Limonene, Basil oil and striped bamboo extract, and others directly associated with the cited McCue et al., including citronella, eucalyptus, peppermint and camphor. It is clear from the collective data that the combination of 1,2-octanediol with any of the claimed citronellal, terpinyl acetate, citronellol and β -pinene provides a strongly synergistic, unexpectedly superior result over what would have been expected based on the combination of the cited references.

Therefore, Applicants submit that the rejections of claims 3, 6 and 9 are clearly overcome by demonstration of unexpectedly superior results associated with the claimed combination of ingredients. Applicants herein amend claims 2, 4 and 7 to incorporate the limitations of claims 3, 6 and 9, respectively.

Claims 10-12 are rejected under 35 U.S.C. §103(a) as being obvious over Clarkson et al. (US Patent Application 2001/0036964 A1) and McCue et al. (US Patent 5,403,587) as applied to claims 1-9 in view of Jensen et al. (US Patent 2,550,255).

Applicants disagree with the rejection of claims 10-12. A reference that teaches that *persea gratissima*, an avocado tree extract, can be used as an “antibacterial agent” in food does not reasonably lead to the suggestion or motivation to use every other “antibacterial agent” in food. There is a virtually infinite number of possible “antibacterial agents” that could be used with food, and most would likely result in illness or death of anyone partaking of the food. One

would not have been prompted to have tried each possible "antibacterial agent" in food. Unless the Examiner is able to show a suggestion to use the claimed alkanediol or a known equivalent with food, Applicants submit that the Examiner has failed to assert a prima facie rejection for obviousness. Applicants therefore traverse this rejection.

In view of the aforementioned amendments and accompanying remarks, Applicants submit that the claims, as herein amended, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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